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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Aug 22, 2024

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DAVID PARKS, an individual, and
THERESA PARKS, an individual,
Plaintiffs,
v.
PAUL MILLER, an individual,
Defendant.

No. 2:23-CV-00225-SAB

**ORDER GRANTING SUMMARY
JUDGMENT IN PART**

Before the Court is Plaintiffs' Motion for Partial Summary Judgment, ECF No. 14. Plaintiffs are represented by Matthew Mensik and Casey Bruner. Defendant is represented *pro se*. The motion was considered without oral argument. Based on the applicable caselaw and briefing, and being fully informed, the Court grants the motion part as to the breach of contract and federal securities fraud claims.

Facts

The following facts are drawn from Plaintiffs' Complaint, ECF No. 1, Statement of Material Facts Not in Dispute, ECF No. 15, the Declaration by David Parks, ECF No. 15, and the Declaration by Casey Bruner, ECF No. 16, and are construed in the light most favorable to Defendant.

This case involves Defendant's allegedly defrauding Plaintiffs. Defendant Paul Miller offered Plaintiffs David Parks and Theresa Parks an opportunity to

ORDER GRANTING SUMMARY JUDGMENT IN PART #1

1 invest in RxMapper, LLC, a new, allegedly cutting-edge healthcare startup that
 2 sought to link genetic markers to effective prescription drugs, eliminating some of
 3 the guess work involved in treating various conditions. Plaintiffs agreed to invest
 4 \$200,000.00 in RxMapper. The Parties executed a SAFE Agreement (“Simple
 5 Agreement for Future Equity”) as to \$200,000 worth of shares in RxMapper.

6 When Plaintiffs chose to invest in RxMapper, Defendant allegedly engaged
 7 in a scheme whereby he altered investment forms and created false bank transfer
 8 instructions so that he, and not RxMapper, received Plaintiffs’ \$200,000.

9 Plaintiffs seek partial summary judgment on their claims of (1) Breach of
 10 Contract, (2) Federal Securities Fraud, 15 U.S.C. § 78 *et seq.*, and (3) Conversion,
 11 and request a judgment in the amount of \$200,000, plus attorneys’ fees and
 12 interest.

13 **Summary Judgment Legal Standard**

14 Summary judgment is appropriate “if the movant shows that there is no
 15 genuine dispute as to any material fact and the movant is entitled to judgment as a
 16 matter of law.” Fed. R. Civ. P. 56(a). There is no genuine issue for trial unless
 17 there is sufficient evidence favoring the non-moving party for a jury to return a
 18 verdict in that party’s favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250
 19 (1986). The moving party has the initial burden of showing the absence of a
 20 genuine issue of fact for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986).
 21 If the moving party meets its initial burden, the non-moving party must go beyond
 22 the pleadings and “set forth specific facts showing that there is a genuine issue for
 23 trial.” *Anderson*, 477 U.S. at 248.

24 In addition to showing there are no questions of material fact, the moving
 25 party must also show it is entitled to judgment as a matter of law. *Smith v. Univ. of*
26 Wash. Law Sch., 233 F.3d 1188, 1193 (9th Cir. 2000). The moving party is entitled
 27 to judgment as a matter of law when the non-moving party fails to make a
 28 sufficient showing on an essential element of a claim on which the non-moving

ORDER GRANTING SUMMARY JUDGMENT IN PART #2

1 party has the burden of proof. *Celotex*, 477 U.S. at 323. The non-moving party
 2 cannot rely on conclusory allegations alone to create an issue of material fact.
 3 *Hansen v. United States*, 7 F.3d 137, 138 (9th Cir. 1993).

4 When considering a motion for summary judgment, a court may neither
 5 weigh the evidence nor assess credibility; instead, “the evidence of the non-movant
 6 is to be believed, and all justifiable inferences are to be drawn in his favor.”
 7 *Anderson*, 477 U.S. at 255.

8 **Applicable Law**

9 Breach of Contract

10 A breach of contract is actionable if the contract imposes a duty, the duty is
 11 breached, and the breach proximately causes damage to the claimant. *Nw. Indep.*
 12 *Forest Mfrs. v. Dep't of Lab. & Indus.*, 78 Wash. App. 707, 712, 899 P.2d 6, 9
 13 (1995). In any breach-of-contract action the plaintiff must prove that valid
 14 agreement existed between the parties, that the agreement was breached, and that
 15 the plaintiff was damaged. § 10:1. Overview—Material breach, 25 Wash. Prac.,
 16 Contract Law And Practice § 10:1 (3d ed.) (citing *University of Washington v.*
 17 *Government Employees Insurance Company*, 200 Wash. App. 455, 404 P.3d 559,
 18 348 Ed. Law Rep. 1033 (Div. 1 2017). Any failure to perform a contractual duty
 19 when the time for performance has accrued constitutes a breach. *Lake Hills*
 20 *Investments LLC v. Rushforth Construction Company, Inc.*, 14 Wash. App. 2d 617,
 21 472 P.3d 337 (Div. 1 2020).

22 Securities Fraud

23 The Securities Exchange Act of 1934 provides a private right of action for
 24 manipulative and/or deceptive conduct. 15 U.S.C. § 78; Rule 10b-5 under Section
 25 10(b). “Whoever knowingly executes, or attempts to execute, a scheme or
 26 artifice. . . (2) to obtain, by means of false or fraudulent pretenses, representations,
 27 or promises, any money or property in connection with the purchase or sale of any
 28 commodity for future delivery, or any option on a commodity for future delivery,

ORDER GRANTING SUMMARY JUDGMENT IN PART #3

1 or any security of an issuer with a class of securities registered under section 12 of
2 the Securities Exchange Act of 1934 (15 U.S.C. 78l) or that is required to file
3 reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C.
4 78o(d)); shall be fined under this title, or imprisoned not more than 25 years, or
5 both.” 18 U.S.C. § 1348.

6 The SEC promulgated Rule 10b-5 under Section 10(b) of the Exchange Act,
7 which authorizes the SEC to regulate securities fraud. The text of the regulation,
8 formally 17 CFR § 240.10b-5, states that “it shall be unlawful for any person . . .
9 (a) [t]o employ any device, scheme, or artifice to defraud, (b) [t]o make any untrue
10 statement of a material fact or to omit to state a material fact . . . or (c) to engage in
11 any act, practice, or course of business which operates or would operate as a fraud
12 or deceit upon any person, in connection with the purchase or sale of any security.”
13 § 240.10b-5 Employment of manipulative and deceptive devices.

14 Courts have interpreted Rule 10b-5 to create a private civil cause of action.
15 To bring a private right of action under Rule 10b-5, the plaintiff must have
16 standing. *In Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723 (1975), the
17 U.S. Supreme Court ruled that a plaintiff must have actually purchased or sold
18 a security to have standing under Rule 10b-5.

Discussion

20 Considering the undisputed facts in a light most favorable to Defendant,
21 Plaintiffs' motion for partial summary judgment as to their breach of contract and
22 federal securities claims is granted.

Breach of Contract

24 From Plaintiffs briefing, Plaintiffs and Defendant entered into an
25 enforceable SAFE Agreement where Defendant sold \$200,000.00 worth of shares
26 to Plaintiffs. To date, no shares have been transferred. Defendant did not have the
27 authority to sell his own interest and now does not own any shares. RxMapper

ORDER GRANTING SUMMARY JUDGMENT IN PART #4

1 demanded that Defendant return the money. Plaintiffs suffered a damage of
2 \$200,000.00. As a result, Defendant is in breach of contract.

Securities Fraud

4 Defendant obtained \$200,000.00 from the Plaintiffs in exchange for
5 an interest in RxMapper via a SAFE Agreement. Defendant personally received
6 those funds and obtained those funds via the following fraudulent and deceptive
7 acts: (1) Defendant asserted that Plaintiffs would be investing with RxMapper. In
8 truth, the SAFE Agreement was revised to sell Defendant's own shares of the
9 company and Plaintiffs were not investing with RxMapper; (2) Defendant provided
10 "wire transfer instructions" that purported to be from RxMapper for RxMapper's
11 bank account, but was his own personal bank account; and, (3) Defendant
12 represented that he had the authority to transfer his shares. In truth, RxMapper's
13 operating agreement prohibits Defendant from selling his shares. Since Defendant
14 knowingly executed a scheme, by means of false representations and promises, to
15 obtain money for the sale of a security, Defendant committed Securities Fraud as
16 outlined under 15 U.S.C. § 78.

Conclusion

18 Plaintiffs' Motion for Partial Summary Judgment is granted in part as to
19 breach of contract and federal securities fraud. Although Plaintiffs moved the
20 Court to determine the allegation of conversion on summary judgment, this Court
21 did not determine this claim on the merits due to a lack of briefing.

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ORDER GRANTING SUMMARY JUDGMENT IN PART #5

1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. Plaintiffs' Motion for Partial Summary Judgment, ECF No. 14, is

3 **GRANTED in part.**

4 2. The Court declined to analyze the conversion claim at this time due to
5 a lack of briefing.

6 3. Once Plaintiffs inform the Court and exhaust any course of chosen
7 action as to the remaining conversion claim, the Court will then enter judgment.

8 **IT IS SO ORDERED.** The Clerk of Court is hereby directed to file this
9 Order and provide copies to counsel **and to** pro se Defendant.

10 **DATED** this 22nd day of August 2024.



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14 Stanley A. Bastian

15 Stanley A. Bastian
16 Chief United States District Judge
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ORDER GRANTING SUMMARY JUDGMENT IN PART #6